

Montana Water Court
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MONTANA WATER COURT OF THE STATE OF MONTANA
CLARK FORK DIVISION – CLARK FORK RIVER BETWEEN THE BLACKFOOT RIVER
AND FLATHEAD RIVER BASIN (76M)

CLAIMANTS: Carol Miller; Scott A. Miller

76M-6005-A-2023

76M 188995-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Carol Miller and Scott M. Miller (the Millers) are the record owners of irrigation claim 76M 188995-00.

2. Claim 76M 188995-00 currently shows the 11.00 acre place of use as being located in Mountain Meadows Subdivision.

3. On August 8, 2023, the Millers filed a Motion to Amend claim 76M 188995-00. (Doc.¹ 1.00). The Motion to Amend indicated the following modification should be made to claim 76M 188995-00:

7. Place of Use: County - Missoula ☒ See attachment 180

<u>11</u> acres	Lot	Block	<u>NE</u> $\frac{1}{4}$	<u>SW</u> $\frac{1}{4}$	$\frac{1}{4}$	Section	<u>14</u>	T	<u>15N</u>	R	<u>22W</u>
_____	acres	Lot	Block	$\frac{1}{4}$	$\frac{1}{4}$	$\frac{1}{4}$	Section	_____	T	_____	R
_____	acres	Lot	Block	$\frac{1}{4}$	$\frac{1}{4}$	$\frac{1}{4}$	Section	_____	T	_____	R
_____	acres	Lot	Block	$\frac{1}{4}$	$\frac{1}{4}$	$\frac{1}{4}$	Section	_____	T	_____	R
_____	acres	Lot	Block	$\frac{1}{4}$	$\frac{1}{4}$	$\frac{1}{4}$	Section	_____	T	_____	R
<u>11</u>	Total Acres	Subdivision <u>none</u>									

☒ Replaces claimed information ☐ Supplements claimed information ☐ Addendum included

13. Reasons for Amendment: Place of use description not correct. The property does not belong to Mountain Meadows subdivision.

Implementing the Millers' proposed Amendment only requires removing the reference to Mountain Meadows Subdivision from the claim. A map and proposed abstract were attached to the Motion to Amend.

PRINCIPLES AND CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

2. The proposed modification to the claim, removing the reference to the subdivision, does not have a reasonable potential to adversely affect other water users and therefore does not require further notice as provided for in Section 85-2-233(6), MCA.

RECOMMENDATION

1. The subdivision reference should be removed from claim 76M 188995-00 as follows:

¹ "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	11.00		NESW	14	15N	22W	MISSOULA
Subdivision:		MOUNTAIN MEADOWS NO 1 TRACT/LOT: 015					
Total:		11.00					

A Post Decree Abstract of Water Right Claim is served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Carol Miller
Scott A. Miller
19125 Conifer Dr.
Huson, MT 59846

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
CLARK FORK, BETWEEN BLACKFOOT & FLATHEAD RIVERS
BASIN 76M

Water Right Number: 76M 188995-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: SCOTT A MILLER
19125 CONIFER DR
HUSON, MT 59846 9723

CAROL MILLER
19125 CONIFER DR
HUSON, MT 59846 9723

Priority Date: APRIL 30, 1967

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: FURROW/FLOOD

Flow Rate: 187.00 GPM

Volume: 7.00 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 11.00

Source Name: UNNAMED TRIBUTARY OF SIXMILE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENESW	14	15N	22W	MISSOULA

Period of Diversion: MAY 1 TO SEPTEMBER 19

Diversion Means: PUMP

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NENESW	14	15N	22W	MISSOULA

Diversion to Reservoir: DIVERSION # 1

Period of Use: MAY 1 TO SEPTEMBER 19

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	11.00		NESW	14	15N	22W	MISSOULA
Total:	11.00						

Remarks:

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

THE FOLLOWING POTENTIAL ISSUES WERE IDENTIFIED DURING CLAIMS EXAMINATION OR DURING PREVIOUS WATER COURT PROCEEDINGS.

WHEN THIS CLAIM WAS ORIGINALLY DECREED, THE PERIOD OF DIVERSION WAS NOT INCLUDED AS AN ELEMENT OF THE CLAIM. IN 2008, THE PERIOD OF DIVERSION ELEMENT WAS ADDED TO ALL CLAIM ABSTRACTS. IT IS NOT CERTAIN IF THE PERIOD OF DIVERSION DATES ADDED TO THIS CLAIM ACCURATELY REFLECT THE HISTORICAL PERIOD OF DIVERSION. MORE INFORMATION IS REQUIRED.